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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

Case No.:

BH SUTTON MEZZ LLC

Debtor.

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**AFFIDAVIT IN ACCORDANCE WITH S.D.N.Y. LBR 1007-2 (a)**

STATE OF NEW YORK     )  
                                      ) ss:  
COUNTY OF NASSAU     )

Herman Carlinsky, as President of BH Sutton Mezz LLC, the Debtor herein (the “**Debtor**”), being duly sworn, deposes and says that:

1. I am the President of the above named petitioner, having voluntarily filed for reorganization under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) on February 26, 2016 (the “**Petition Date**”).

2. I submit this affidavit (the “**Affidavit**”) in support of the Debtor’s voluntary petition (the “**Petition**”) for relief under Chapter 11 of the Bankruptcy Code, pursuant to Rule 1007-2(a) of the Local Rules of Bankruptcy Procedure for the Southern District of New York.

3. Except as otherwise noted herein, all facts set forth in this Affidavit are based upon my personal knowledge, my review of relevant documents and information, or my opinion based upon my experience and knowledge of the Debtor’s operations and financial condition.

4. On the Petition Date, the Debtor filed its voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code. The Debtor continues to remain in possession of its

assets, operate its business and manage its affairs as the debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5. No trustee, examiner or committee of creditors has been appointed in this case.

6. The Debtor is not a small business debtor as defined by Section 101(51D) of the Bankruptcy Code.

7. The Debtor is a limited liability corporation formed in Delaware in January 2015. The Debtor owns 100% of Sutton 58 Owner LLC. Sutton 58 Owner LLC owns the real properties known as, and located at, 428 East 58<sup>th</sup> Street, New York, New York 10022, 430 East 58<sup>th</sup> Street, New York, New York 10022 and 432 East 58<sup>th</sup> Street, New York, New York 10022 (the “**Real Properties**”).

8. Presently, the Debtor does not have any employees.

9. The Debtor has never previously filed a petition for relief under the provisions of the Bankruptcy Code. The Debtor intends to propose an arrangement for reorganization pursuant to the provisions of Chapter 11 of the Bankruptcy Code.

10. Annexed to the Petition is a schedule of the twenty (20) largest unsecured claims of the Debtor’s estate.

11. The Debtor has the following alleged secured creditor: Gamma Lending S58 LP, Attention: N. Richard Kalikow: 101 Park Avenue Suite 2602, New York, New York 10178, (the “**Gamma Lender**”).

12. The Debtor’s assets consist of its membership interest in Sutton 58 Owner LLC.

13. The Debtor does not have any shares of stock that are publically held.

14. The Debtor and the Affiant are in possession and control of limited books and records. The Debtor owns no assets that are physically located outside the United States.

15. As of the Petition Date, there is a litigation captioned BH Sutton Mezz LLC et al vs. Sutton 58 Associates, LLC, Index No. 650832/16, pending in the Supreme Court of the State of New York, County of New York.

16. The Gamma Lender has scheduled a foreclosure sale under the Uniform Commercial Code to be held on February 29, 2016 at 11:00 a.m.

17. The Debtor does not have any payroll obligations for the next thirty (30) days.

18. The Debtor's Chapter 11 filing was precipitated by, among other things, litigation with one of its lenders and an attempt by the Gamma Lender to foreclose on the Debtor's membership interest through a quick sale under the Uniform Commercial Code. There is substantial equity in the Real Properties and the Debtor seeks relief from the Bankruptcy Court to protect the value of its assets.

19. The Debtor believes that with the protections of this Court and the Bankruptcy Code, it will be able to restructure its business arrangements and debts and propose a meaningful and acceptable plan of reorganization, which may include a sale of its assets.

**WHEREFORE**, your Affiant prays that it shall be authorized to continue in the operation and management of its business and affairs pending further Order of this Court.

BH Sutton Mezz LLC

By:

s/ Herman Carlinsky

Herman Carlinsky, President

Sworn to me on this 26<sup>th</sup> day of February 2016

s/ Angela Colucci

Angela Colucci

Notary Public State of New York

No. 4674875

Qualified in Nassau County

Commission Expires July 31, 2018

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